

Notice of Allowability

Application No.

08/070,455

Applicant(s)

HOFVANDER ET AL.

Examiner

David T. Fox

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to papers filed 30 December 2003.
2. ☒ The allowed claim(s) is/are 1, 4, 7-23, 50-80, 94-124 and 126-128 renumbered as 1-84.
3. ☒ The drawings filed on 09 June 1993 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No. _____.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1 <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. <u>122963</u> . |
| 3 <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No. _____ | 7 <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9 <input type="checkbox"/> Other |

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An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

IN THE SPECIFICATION:

On page 1, directly beneath the title, the following paragraph was inserted:

---This application is a 371 of PCT/SE91/00892 filed 20 December 1991.---

On page 6, lines 33-34 were replaced with the following:

---Brief Description of the Drawings---

On page 7, the following was inserted between lines 13 and 14:

--Detailed Description of the Invention--.

IN THE CLAIMS:

Claim 125 was cancelled without prejudice.

Claims 1, 4, 7, 10, 15, 51-53, 56, 61, 67, 69, 71, 79, 95 and 118 were amended as follows:

In claim 1, line 7, ---and--- was inserted before "nucleotide".

In claim 1, lines 8-10, the phrase "and nucleotide sequences...function, together with" was deleted and replaced with ---operably linked to---.

In claim 4, line 3, ---and--- was inserted after "3,".

In claim 7, line 3, ---operably linked to--- was inserted after "promoter;".

In claim 7, line 7, ---and--- was inserted after "3,".

In claim 10, line 4, ---and--- was inserted after "3,".

In claim 10, line 5, "and" was replaced with ---said nucleotide sequence---

In claim 10, line 7, ---and operably linked thereto--- was inserted before the period.

---Claim 15 (amended). A seed from a potato plant, wherein the [whose] genome of said seed comprises the antisense construct as claimed in claim 7.---

In claim 51, line 7, ---and--- was inserted after "3,".

In claim 52, line 3, ---and--- was inserted after "2,".

In claim 53, line 4, ---operably linked to--- was inserted after "promoter,".

In claim 53, line 8, ---and--- was inserted after "2,".

In claim 56, line 3, ---and--- was inserted after "2,".

In claim 56, line 6, ---and operably linked thereto--- was inserted before the period.

---Claim 61 (amended). A seed from a potato plant, wherein the [whose] genome of said seed comprises the antisense construct as claimed in claim 53.---

---Claim 67 (amended). A seed from a potato plant, [whose] wherein the genome of said seed comprises the antisense construct as claimed in claim 54.---

In claim 69, penultimate line, "SEQ ID NO. 4," was replaced with ---and---.

In claim 71, line 4, "and" was replaced with ---operably linked to---.

---Claim 79 (amended). A seed from a potato plant, [whose] wherein the genome of said seed comprises the antisense construct as claimed in claim 71.---

In claim 95, line 2, "protomer" was replaced with ---promoter--- and "comprsiing" was replaced with ---consisting essentially of---.

In claim 118, "52" was replaced with ---51---.

Authorization for this examiner's amendment was given in a telephone interview with James Remenick on 15 January 2004.

The following is an examiner's statement of reasons for allowance:

The claims are allowed in view of the Board Decision of 25 September 2001 which indicated that the instantly claimed fragments or sequences of the potato granule bound starch synthase (GBSS) gene were not taught or suggested by Visser et al (US 6,600,093). Basis for "practically complete" may be found on page 5 of the specification, lines 20-22. It is now considered that this term is definite. It is also now considered that "consisting essentially of" in claim 95 is definite.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fox whose telephone number is (571) 272-0795. The examiner can normally be reached on Monday through Friday from 10:30AM to 7:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson, can be reached on (571) 272-0804. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

January 21, 2004

DAVID T. FOX
PRIMARY EXAMINER
GROUP 180-1638

